



SB1170 SD2
RELATING TO ENFORCEMENT OF VIOLATIONS
BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES
House Committees on Water and Land and
Ocean, Marine Resources, and Hawaiian Affairs

March 11, 2013

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1170 SD2, which would remove barriers to more efficient, fair and potentially transformative enforcement of natural and cultural resource laws through non-criminal, administrative adjudication by the Board of Land and Natural Resources (BLNR).

Over the last decade, it has become clear that numerous issues are inhibiting the effective enforcement of natural and cultural resource laws and regulations under the jurisdiction of the Department of Land and Natural Resources (DLNR). While funding and overall capacity are clear and obvious challenges to enforcement, **it appears that the current, nearly exclusive reliance on the criminal court system has also presented significant barriers to the effective enforcement of our natural and cultural resource laws.** Such barriers include:

1. The reluctance of district court judges and prosecutors to impose criminal liability commensurate with criminal property damage, drug possession, or third degree assault for natural resource violations;
2. The substantive and procedural burdens of proof required to establish a criminal violation, including the “beyond a reasonable doubt” criminal burden of proof and the relatively stringent Hawai’i Rules of Evidence;
3. A lack of substantive institutional knowledge within the criminal district court system of specific natural resource laws, their jurisdictional bases, and how they are or should be interpreted or applied; and
4. The disproportionate cost of enforcing rare and esoteric natural and cultural resource cases in an overburdened criminal court docket, consisting almost entirely of more familiar and readily established crimes.

One suggested approach to obviating the above barriers has been the expanded use of the BLNR’s noncriminal, administrative enforcement authorities, such as those used to enforce conservation district violations by the Office of Conservation and Coastal

Lands.¹ However, while the BLNR currently already has the authority to administratively impose civil sanctions for most natural and cultural resource violations, the BLNR's capacity to do so is limited by concerns regarding the ability of violators to pay substantial civil fines, and by the department's capacity to recover outstanding fines or other penalties should an alleged violator default.

This bill will address the concerns preventing the BLNR from exploring expanded noncriminal enforcement of natural and cultural resource violations. By providing the BLNR with the option of imposing natural- or cultural-resources related community service in lieu of civil fines, this bill will allow the BLNR to meaningfully sanction individuals who may not be able to pay the monetary penalties that the BLNR is currently authorized to impose. Imposing community service-type penalties, particularly as they relate to natural or cultural resources, has the added potential benefit of transforming or rehabilitating alleged violators' perspective regarding the importance of our resource laws, as has been demonstrated in other jurisdictions and by local anecdotal reports. In addition, such penalties may more directly benefit or restore the resources impacted by a violator's actions. Providing the BLNR with authority to place a car registration stopper for recalcitrant or noncompliant violators will also allow the BLNR to more efficiently ensure compliance with imposed penalties, without resorting to civil litigation or more costly processes.

Therefore, OHA urges the Committees to **PASS** SB1170 SD2. Mahalo for the opportunity to testify on this measure.

¹ See HB2590 (Reg. Sess. 2012); SB2852 (Reg. Sess. 2012); Fish and Coral Think Tank, The Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement (ABOUT FACE) Act, <http://factt.weebly.com/about-face-act.html> (last accessed Jan. 30, 2013).

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1170 SD2 Relating to Enforcement of Violations by the DLNR
House Committee on Water and Land
House Committee on Ocean, Marine Resources, and Hawaiian Affairs
Monday, March 11, 2013, 9:30AM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 35,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports S.B. 1170 SD2.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved compliance, enforcement and prosecution of violations of our State natural resource laws. A 2006 State Auditor's report concludes that DLNR Division of Conservation and Resources Enforcement (DOCARE) officers are spread too thin and lack the equipment they need to do their jobs. In a better economy, the Legislature had been able to provide some relief with financial support and an increase in the number of trained officers and equipment. .

Against this backdrop, a number of communities across the state have been organizing themselves to become more directly involved in the care and management of their natural resources, particularly in coastal and near shore areas. Some communities have partnered with DOCARE to raise awareness of natural resource laws and to improve compliance with those laws.

With increased community involvement in marine resource management and enforcement, it will help DLNR, DOCARE, and community-based managers to have additionally flexibility in applying effective civil penalties to justly punish current infractions, effectively deter future violations, and foster greater compliance in the future. S.B. 1170 offers two enforcement strategies with community service and license suspension that can be employed when criminal or financial penalties are ineffective, particularly in an overburdened state court system.

Thank you for this opportunity to offer our support for this measure.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 09, 2013 7:08 PM
To: waltestimony
Cc: tony@pop-hawaii.com
Subject: *Submitted testimony for SB1170 on Mar 11, 2013 09:30AM*

SB1170

Submitted on: 3/9/2013

Testimony for WAL/OMH on Mar 11, 2013 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Costa	Hawaii Nearshore Fishermen	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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REGULAR SESSION OF 2013

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NOTICE OF HEARING

DATE: Monday, March 11, 2013
TIME: 9:30am
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

SB 1170 SD2

Testimony in Strong Opposition.

Honorable Chairs Evans and Hanohano and Vice-Chairs Lowen and Cullen and Committee Members:

While it is important to enforce Department of Land and Natural Resources rules, it does not rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with the violation. This would prevent an individual who satisfies all other requirements from legally registering his or her vehicle in their respective county necessary to provide the legal use of their vehicle to satisfy typical daily life activities including getting to and from the their jobs. I would suggest that given the current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action would probably not result in improved collections of fines, but may rather force an individual to use an unregistered vehicle in order to survive, especially on our neighbor islands where public transportation is limited.

I strongly believe that there are sufficient remedies and procedures currently available to the State to collect delinquent fines. To introduce another layer of administrative oversight during these tough fiscal times and already stretched government agencies and workers requires careful and serious review and consideration.

And finally, to impose an individual to community service under the direction of a non-governmental agency presents potentially serious liability issues and concerns to the individual, the chosen agency and the State is another reason for serious review and consideration by your committees.

Thank you for this opportunity to provide this important testimony regarding SB 1170 SD2 and ask for your careful analysis and consideration to kill this bill.

Respectfully Submitted,

Roy N. Morioka
Honolulu, HI 96821

Testimony Before the
Committee on Ocean, Marine Resources & Hawaiian Affairs
Committee on Water and Land
Hawai'i Legislature Rm 325
IN SUPPORT OF SB 1170 SD 2
March 11, 2013 9:30 am.

Aloha honorable legislators,

My name is Kevin Chang and I personally support SB 1170 SD 2 which provides alternative civil enforcement options that may be utilized by BLNR in the processing of natural and cultural resource violation cases .

In my work life as the executive director of Kua'āina Ulu 'Auamo (KUA) I am privileged to work with a movement of rural and Native Hawaiian communities working across pae'āina o Hawai'i to protect and renew the environmental and cultural legacy passed down to the many generations of these islands. A task for our greater community in the years ahead will be to build the bridges we need to collectively fulfill our kuleana to preserve Hawai'i for present and future generations as we boldly stated in 1978. Providing alternative civil tools to help BLNR uphold its kuleana to the people of Hawai'i provides additional and graduated leverage to renew the cultural values and civil obligations we have for ourselves and our relationship with the environment through personally transformative or corrective measures which can touch on the foundations and kuleana that underlie the purpose of our natural resource laws.

Not only are criminal penalties difficult to prosecute but our community in many ways has overshot the runway in how we live off this 'āina. Civil penalties allow for a graduated, softer approach to the runway in moving our community back towards a relationship which is more lōkahi.

Your choice to begin bridging the looming gap between our collective aspirations and the current reality is not just an improvement in environmental governance it is a step towards rebuilding our community well-being.

Aloha

Kevin

TESTIMONY

SB1170 SD2

RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

**House Committees on Water and Land and
Ocean, Marine Resources, and Hawaiian Affairs**

March 11, 2013

9:30 a.m.

Capitol Conference Room 325

RE: Testimony in SUPPORT of SB1170 SD2

To the Honorable Chair Evan, Chair Hanohano, and Members of the House Committees on Water and Land and Ocean, Marine Resources, and Hawaiian Affairs,

Mahalo nui for the opportunity to strongly **SUPPORT** SB1170 SD2, which will allow the Department of Land and Natural Resources (DLNR) explore relatively fair, efficient, and potentially transformative non-criminal alternative approaches to natural resources enforcement.

As a DLNR Marine Law Fellow for three years, I have observed first-hand how the nearly exclusive use of our criminal justice system to enforce natural resources violations has significantly impaired our state's ability to ensure compliance with our environmental regulations. The esoteric and unfamiliar nature of these types of violations, when mixed in with a substantial majority of more recognizable crimes in the criminal court docket, create disproportionate and costly burdens for prosecutors, public defenders, judges, and court staff. Stringent rules of evidence and high burdens of proof, coupled with the potential for criminal misdemeanor liability, further hamper the ability of criminal courts to impose penalties that would be most effective at deterring noncompliant behavior, or of ensuring the restoration of natural resources or the rehabilitation of defendants.

This bill removes barriers to the broader use of the BLNR's administrative enforcement authority, which otherwise allows the resource agency to implement civil penalties that are proportionate and relatively appropriate to the type and severity of a natural or cultural resources violation. In addition to the lowered burdens of proof, lowered and non-criminal liability, and focused attention on natural resource cases as part of the BLNR's specific kuleana, this bill will allow the use of cultural- and natural-resources community service penalties as a means of transforming poacher's perspectives on the value of compliance with resources laws. The back-end registration stopper is reserved only for those who have been specifically found by the BLNR to have failed to comply with civil penalty orders, and provides a cheaper and more efficient means to ensure that alleged violators take any imposed penalties seriously, and do not simply walk away from a judgment of noncompliance.

Overall, this bill will therefore lower the costs to the state and defendants in enforcing resources violations, while better protecting our limited natural and cultural resources by allowing the exploration of enforcement approaches that provide greater levels of fairness and effectiveness at ensuring compliance.

Therefore, I respectfully urge the Committees to **PASS** SB1170 SD2. Thank you for the opportunity to testify in support of this measure.

Sincerely,

Wayne Tanaka
2221 Booth Rd.
Honolulu, Hawai'i 96813
wctanaka@gmail.com



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Monday, March 11, 2013
9:30 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1170, SENATE DRAFT 2
RELATING TO ENFORCEMENT OF VIOLATIONS
BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES**

Senate Bill 1170, Senate Draft 2 proposes to provide alternative civil enforcement options that may be utilized by the Board of Land and Natural Resources in the processing of natural and cultural resource violation cases. **The Department of Land and Natural Resources (Department) strongly supports this measure, with exception to its effective date of July 1, 2050. The Department respectfully asks that the Committees restore the "upon approval" effective date.**

Currently, under Section 171-6, Hawaii Revised Statutes, the Board of Land and Natural Resources (Land Board) may levy administrative fines and order encroachment removal and damage restoration for violations of natural and cultural resource laws and regulations. However, in many cases, the use of these means may not be feasible or optimal.

This proposed legislation will provide flexibility to both the Department and the parties of resource law violations in the Department's civil enforcement actions. It will 1) authorize the Land Board to impose consensual community service in lieu of a fine, 2) empower the Land Board to hold up a license or permit until all previous violations are properly addressed even if the license or permit is not directly related to the violation in question, and 3) provide a process to compel compliance by holding up a party's vehicle registration. Some of these procedures or their similar forms have been formally or informally used by the Department, other state agencies or even in other jurisdictions and proved to be effective.

The Department offers the following further explanations of this measure:

- First, the community services in remedial or non-remedial actions responding to resource violations will be imposed only with the prior consent of all the parties involved and will not incur any potential liabilities to the State.
- Second, the Department sees that, in many resource violation cases, it is unfair to continue to allow a party to reap economic benefits from the holding of a license or permit issued by the Department while delinquent in complying with a law or regulation administered by the Department. Oftentimes, the violation is so interrelated to the license or permit, even if not directly related, that a withholding of the license or permit is not only a justifiable but also a responsible action that should be taken by the Department.
- Third, a partially similar bill was introduced in last year's legislative session for the withholding of a party's driver's license to ensure resource law compliance. The Department now instead believes that the withholding of vehicle registration is an equally-effective but less drastic and more accommodating method that should be adopted. The Department understands that this proposed statute, if enacted, will not be mandatory in nature and will require further negotiation and coordination with motor vehicle registration authorities of the various counties.

This proposed legislation will encourage the parties to voluntarily come to compliance and to proactively address the violations in every way possible and available to them. It will also promote the Department's efficiency by saving the time and cost otherwise needed in involuntary enforcement actions. Further, it will promote the participation of various community-based non-profit organizations in partnering with the Department on resource protection and management projects.

These procedures will be particularly effective in cases involving relatively minor resource law violations and thus allow the Department to process such cases through its administrative processing system rather than the judicial system which is more costly to the Department, county prosecutors and the parties involved in violations.

If this measure is enacted, the Department intends to adopt appropriate rules to provide further clarification and applicability of these procedures before their implementation.

This measure will not incur additional financial burdens to or require funding sources from the State and may generate additional revenues and savings for the Department through enhanced compliance and decrease in contested cases and enforcement needs.